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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,360	05/16/2001	Joseph A. Manico	82171SLP	3327

7590 12/08/2006
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EXAMINER


BAKER, CHARLOTTE M

ART UNIT PAPER NUMBER

2625

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Application Number 	Application/Control No. 09/858,360 Charlotte Baker	Applicant(s)/Patent under Reexamination MANICO ET AL. Art Unit 2625
Document Code - AP.PRE.DEF		

Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed 13 November 2006.

1. ☒ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☒ Other: The Applicant incorrectly presumed that the amendment after final will be entered, even though the Advisory action dated 10/18/06 indicates that amendment would not be entered due to further consideration and/or search in addition to the examiner writing "do not enter" and signing the first page of the proposed amendment, which was available for the Applicant's viewing in PAIR. Further, the Applicant did not contact the examiner for clarification of any confusion. Therefore, the Pre-Appeal Brief review request is improper because the arguments presented are made in view of claims presented in an after final amendment. Regarding the Applicant's arguments that the Final was improper, again sections (B)(1) and (B)(2) are both met because the claims are drawn to the same invention, just rephrased, and the same art of record was used to reject the claims.

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☐ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

- ☐ The panel has determined the status of the claim(s) is as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Charlotte Baker.

CMB-

(3)_____.

(2) Kimberly A. Williams.

KAW Williams

(4)_____.